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**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No.
)	
v.)	COMPLAINT
)	
TAMARACK RESORT LLC)	
)	
Defendant.)	
)	

Plaintiff, the United States of America ("United States"), by authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

COMPLAINT - PAGE 1

INTRODUCTION

1. This is a civil action for injunctive relief and penalties brought pursuant to Section 309(b) and (d) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1319(b) and (d), against Tamarack Resort LLC (“Defendant”) for violations of the Act’s requirements governing the discharge of storm water.

2. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519 and Section 506 of the Act, 33 U.S.C. § 1366.

JURISDICTION AND VENUE

3. This court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1345 and 1355 and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b).

4. Venue is proper in the District of Idaho pursuant to 28 U.S.C. §§ 1391(b) and (c), 1395(a), and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), because the violations alleged in this Complaint occurred at a site owned or operated by Defendant which is located in this District.

5. The United States has notified the State of Idaho of the commencement of this action. That notice is in accordance with CWA Section 309(b), 33 U.S.C. § 1319(b).

DEFENDANT

6. Defendant is a limited liability corporation created by or pursuant to the laws of the State of Delaware. It is licensed to operate in the State of Idaho by the Idaho Secretary of State.

7. Defendant is a “person” within the meaning of Sections 301(a) and 502(5) of the Act, 33 U.S.C. §§ 1311(a) and 1362(5).

STATUTORY AND REGULATORY AUTHORITY

8. The objective of the Act is to restore and maintain the chemical, physical and biological integrity of the nation's waters.

9. To accomplish the objective of the Act, Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in compliance with certain sections of the Act, including Section 402 of the Act, 33 U.S.C. § 1342.

10. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System ("NPDES") permit program.

11. Section 402(p) of the Act, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any "storm water discharge associated with industrial activity." The regulations implementing Section 402(p) of the Act, 33 U.S.C. § 1342(p), define "storm water discharge associated with industrial activity" to include discharges associated with construction activity, including clearing, grading, and excavation resulting in the disturbance of at least five acres of total land area. 40 C.F.R. § 122.26(b)(14)(x). In 2003, EPA re-issued the NPDES General Permit for Storm Water Discharges From Construction Activities ("CGP"). 68 Fed. Reg. 39087 (July 1, 2003).

12. Section 309(b) of the Act, 33 U.S.C., § 1319(b), authorizes the Administrator of EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of Section 301 of the Act, 33 U.S.C., § 1311, or of any NPDES permit conditions or limitation implementing Section 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), or 308 (Records and Reports; Inspections) of the Act, 33 U.S.C., § 1311, 1312, or 1318, among other provisions.

13. Section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19, provide, in part, that any person who violates Section 301 of the Act, 33 U.S.C. § 1311, or any NPDES permit condition or limitation implementing Section 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), or 308 (Records and Reports; Inspections) of the Act, 33 U.S.C. § 1311, 1312, or 1318, among other provisions, shall be subject to a civil penalty not to exceed \$27,500 per day for each such violation occurring after September 1, 2003 through and including March 15, 2004 and \$32,500 per day for each such violation thereafter.

GENERAL ALLEGATIONS

14. Defendant began construction of the Tamarack Ski Resort near Donnelly, Idaho ("the Site") on September 1, 2003. On March 9, 2004, Defendant submitted a Notice of Intent ("NOI") to be covered by the CGP.

15. On March 16, 2004, EPA authorized Defendant to discharge to waters of the United States subject to the conditions of the CGP in connection with construction of the Site. EPA assigned permit number IDR10AB52 to Defendant. Defendant terminated its coverage under permit number IDR10AB52 on March 14, 2006. On January 6, 2006, Defendant submitted an NOI to be covered by the CGP for Tamarack Resort Phase 1 and Golf. On January 13, 2006, EPA authorized Defendant to discharge to waters of the United States subject to the conditions of the CGP in connection with construction of Tamarack Resort Phase 1 and Golf. EPA assigned permit number IDR10AX10 to Defendant. On January 13, 2006, Defendant also submitted an NOI to be covered by the CGP for Tamarack Resort Phase 2. On January 13, 2006, EPA authorized Defendant to discharge to waters of the United States subject to the conditions of the CGP in connection with construction of Tamarack Resort Phase 2. EPA assigned permit

number IDR10AX09 to Defendant.

16. Defendant owns and has responsibility for the construction of a ski resort at the Site. At all times relevant to this Complaint, the Site contained more than five acres of total disturbed area.

17. The Site is located on the shores of Cascade Reservoir, and it is traversed by a number of unnamed streams and by Poison Creek and Rock Creek. These streams drain into the Cascade Reservoir, which flows into the Payette River. The Payette River flows into the Boise River, which flows into the Snake River, which flows into the Columbia River, which is a tributary of the Pacific Ocean. The Cascade Reservoir is a traditional navigable water.

18. The streams traversing the Site are tributaries of the Cascade Reservoir. Those streams and the Cascade Reservoir are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

19. Defendant is an “operator” of the Site as defined in Appendix A of the CGP. Defendant is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1353(5).

20. On or about September 1, 2003, and at times more fully known to Defendant, Defendant commenced construction activity at the Site including clearing, grading, and excavation activities. Defendant continues to engage in construction at the Site. Defendant therefore is engaging in “industrial activity” at the Site within the meaning of 40 C.F.R. § 122.26.

21. Defendant’s construction activities have resulted in discharges of storm water to the streams traversing the Site and to Cascade Reservoir. This storm water has been conveyed through and over gullies, ditches, channels, pipes, cut and fill slopes, silt fences, and stockpiled material placed in disturbed areas of the Site. These discharges occurred on a regular basis since

the onset of construction at the Site.

22. The storm water referenced above contains “pollutant[s]” within the meaning of Sections 301(a) and 502(6) of the Act, 33 U.S.C. §§ 1311(a) and 1362(6), and 40 C.F.R. § 122.2, including sand, dirt, sediment, suspended solids, residue, turbidity, and concrete wash.

23. The Site itself, as well as the gullies, ditches, channels, pipes, cut and fill slopes, and stockpiled material referenced in Paragraph 22 above constitute “point source[s]” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

24. By causing such pollutants to enter waters of the United States, Defendant has engaged in the “discharge of pollutants” from a point source within the meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

25. Upon information and belief, Defendant has not taken sufficient actions to ensure that discharges will cease.

FIRST CLAIM FOR RELIEF
(Discharge Without a Permit)

26. Paragraphs 1 - 25 are re-alleged and incorporated herein.

27. Defendant began construction at the Site on or about September 1, 2003.

Defendant did not obtain coverage under the CGP until March 16, 2004.

28. Therefore, Respondent was discharging pollutants to waters of the United States without an NPDES permit from at least September 1, 2003 to March 16, 2004.

SECOND CLAIM FOR RELIEF
(Failure to Comply with the CGP)

29. Paragraphs 1 - 25 are re-alleged and incorporated herein.

30. Defendant failed to prevent concrete washout from flowing through a silt fence to

an adjacent wetland and a tributary of the Cascade Reservoir on April 21, 2005 in violation of CGP § 4.5.

31. During an April 21, 2005 inspection, EPA inspectors observed evidence of past sediment discharges in several unnamed tributaries to the Cascade Reservoir. These discharges violated CGP § 4.5.

32. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to have the copy of the permit language in the storm water pollution plan ("SWPPP") for the Site in violation of CGP § 3.8.

33. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to have all operators sign/certify the SWPPP in violation of CGP § 3.12.D.

34. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to identify all operators and their areas of control in violation of CGP § 3.3.A.

35. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to identify the location of materials or equipment storage on the site map in violation of CGP § 3.3.C.

36. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to have the location/description of any storm water discharges associated with industrial activities in the SWPPP in violation of CGP § 3.3.D.

37. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to include in the SWPPP dates of major grading activities, temporary/permanent construction cessation and initiation of stabilization practices in violation of CGP §§ 3.4.C.1-3.

38. During the April 21, 2005 inspection, EPA inspectors observed that Defendant

failed to include in the SWPPP clearly described appropriate control measures (best management practices, or “BMPs”) for each major activity identified in the project description, the general sequence during the construction process in which the control measures will be implemented, and which operator is responsible for implementation of the control measure in order to control pollutants in storm water discharges. This is a violation of CGP § 3.4.A.

39. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to identify in the SWPPP the timing by which interim and permanent stabilization practices would be implemented for the site in violation of CGP § 3.4.B.

40. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to identify in the SWPPP the timing by which structural practices would be implemented to divert flows from exposed soils, retain/detain flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site in violation of CGP § 3.4.D.

41. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to provide in the SWPPP a description of construction and waste materials expected to be stored on-site including a description of controls to minimize exposure of the materials to storm water in violation of CGP § 3.4.H.

42. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to provide in the SWPPP a description of pollutant sources from areas other than construction, and a description of controls and measures to control the discharge of pollutants (concrete washout being discharged to the Cascade Reservoir) in violation of CGP § 3.4.I.

43. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to identify in the SWPPP allowable non-storm water discharges in violation of CGP § 3.5.

44. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to ensure in the SWPPP implementation of pollution prevention measures for non-storm water discharges in violation of CGP § 3.5.

45. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to revise the SWPPP when BMPs were added or modified within seven days after an inspection had revealed problems in violation of CGP § 3.11.C.

46. During the April 21, 2005 inspection, EPA inspectors observed that Defendant failed to include documentation of the inspections that are required by the CGP in violation of CGP §§ 3.10.A-B and 3.10.G.

47. Defendant violated CGP § 3.13.D on at least April 21, 2005, May 19, 2005, May 23, 2005, October 13, 2005, and April 20, 2006 by poorly stabilizing soils at the Site.

48. Defendant violated CGP § 3.13.A by improperly installing and maintaining BMPs on at least five occasions: April 21, 2005, May 19, 2005, May 23, 2005, October 13, 2005, and April 20, 2006.

49. Defendant violated CGP § 4.5 by discharging turbid water to ephemeral streams and Poison Creek, which all are tributaries of the Cascade Reservoir, on at least May 19, 2005, and May 23, 2005, in violation of CGP § 4.5.

50. During the October 13, 2005 inspection, EPA inspectors observed that Defendant failed to properly maintain the best management practices for the concrete washout in violation of CGP § 3.13.A.

51. During the October 13, 2005 inspection, EPA inspectors observed that Defendant failed to properly stabilize the large pile of dirt in the construction storage area after the activities

had been ceased (either temporarily or permanently) for at least 14 days in violation of CGP § 3.13.D.

52. During the October 13, 2005 inspection, EPA inspectors observed that Defendant had uncovered storage of three barrels of waste oil and several pallets of grout and mortar near a drainage ditch to the storm water retention pond in the construction storage yard in violation of CGP § 3.13.C.

53. During the October 13, 2005 inspection, EPA inspectors observed that Defendant failed to prevent vehicle track-out at the following locations: 1) the construction storage yard entrance; 2) an entrance north of the main resort entrance; and 3) both entrances to the Village Plaza in violation of CGP § 3.13.B.

54. During the October 13, 2005 inspection, EPA inspectors observed that Defendant failed to install any velocity dissipation devices at the outfall of the pond at the construction storage yard or at the outfall of the pond at the base of the main ski slope in violation of CGP § 3.13.F.

55. During the April 20, 2006 inspection, EPA inspectors observed that Defendant failed to prevent vehicle track-out at all of the roads within the resort property in violation of CGP § 3.13.B.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, requests that the Court enter judgment on behalf of the United States and against Defendant as follows:

(1) That the Defendant be permanently enjoined from violating the terms of its storm water construction general permits;

(2) That the Defendant be assessed, pursuant to CWA Section 309(d), 33 U.S.C. § 1319(d), a civil penalty for each day of each violation of CWA Section 301(a) and 309(a), 33 U.S.C. §§ 1311(a) and 1319(a), which penalty shall not exceed \$27,500 per day for each such violation occurring after September 1, 2003 through and including March 15, 2004 and \$32,500 per day for each such violation thereafter;

(3) That the United States be awarded costs and disbursements in this action; and

(4) That this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.

Respectfully submitted,

U.S. Department of Justice
Environment and Natural Resources
Division

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